

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 6/14/2012

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Council High School Property

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute Declaration Covenants among the City of Huntsville, the Huntsville Housing Authority, and William Hooper Council Alumni Association, Inc. for redevelopment of the former site of Council High School.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 12-\_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Declaration of Covenants by and among the City of Huntsville, the Huntsville Housing Authority and the William Hooper Council Alumni Association, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "DECLARATION OF COVENANTS AMONG THE CITY OF HUNTSVILLE, HUNTSVILLE HOUSING AUTHORITY, AND WILLIAM HOOPER COUNCIL ALUMNI ASSOCIATION, INC.," consisting of seven (7) pages including Exhibit A, and the date of June 14, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 14th day of June, 2012.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the 14th day of June, 2012.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

STATE OF ALABAMA  
County of Madison

THIS INSTRUMENT PREPARED BY:  
Huntsville Housing Authority  
200 Washington Street  
P. O. Box 486  
Huntsville, Alabama 35804-0486  
Attn: Director of Development

**DECLARATION OF COVENANTS**  
**WILLIAM HOOPER COUNCILL SCHOOL**

THIS DECLARATION OF COVENANTS FOR WILLIAM HOOPER COUNCILL SCHOOL, dated as of June 14th, 2012 by and among the HUNTSVILLE HOUSING AUTHORITY ("Authority") an Alabama public body, corporate and politic, organized and existing under the laws of the State of Alabama, the CITY OF HUNTSVILLE ("City"), a municipal corporation within the State of Alabama, and WILLIAM HOOPER COUNCILL ALUMNI ASSOCIATION, INC. ("Association"), an Alabama non-profit corporation.

**WITNESSETH:**

WHEREAS, the City has deeded certain real property described in Exhibit A hereto (the "Property") to the Authority for a term of ten (10) years (the "Term") with the expectation that the Authority undertake certain activities on the Property after which time the Property transfers to Association pursuant to the Deed;

WHEREAS, the Authority agrees to accept the obligations in this Declaration in connection with acquisition of the Property;

WHEREAS, the Association agrees to accept such obligations in this Declaration in connection with acquisition of the Property;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

1. Authority shall promptly cause the ad valorem tax assessment for the Property on file in the Office of the Tax Assessor of Madison County, Alabama, to be revised to reflect the ownership of said Property established by the Deed.

2. At the end of the Term, Association shall promptly cause the ad valorem tax assessment for the Property on file in the Office of the Tax Assessor of Madison County, Alabama, to be revised to reflect the ownership of said Property established by the Deed.

3. At no time during the Term shall Authority ever allow, cause, permit and/or suffer any of the following without the City's and Association's prior written approval:

a. Any improvements on or to the Property (whether permanent or otherwise) other than other improvements to which the City and the Association consent in writing;

b. All or any part of the Property, or any interest therein, to be assigned, encumbered, executed upon, subjected to any lien or security interest, mortgaged and/or pledged, whether voluntarily or involuntarily; and/or

c. All or any part of the Property, or any interest therein, to be alienated, conveyed, leased, rented, sold, transferred or otherwise disposed of, whether voluntarily or involuntarily,

any of which actions if attempted and/or completed shall be absolutely null and void, *ab initio*.

4. During the Term, Authority, at its cost and expense, shall (a) secure from a good and responsible company or companies licensed to do insurance business in the State of Alabama and acceptable to City and Association, (b) have in force on the beginning date of said term of years and (c) thereafter maintain continuously during said term of years, insurance policies providing the following insurance coverages:

a. "All Risk", First Party, fire, windstorm and extended coverage insurance in an amount not less than one hundred percent (100%) of the full replacement value of the improvements and structures on the Property (excluding Authority's equipment, furnishings, furniture and other property located thereon or therein), with endorsements for earthquake, flood, inflation guard, mold and asbestos, ordinance or law, and pollution, coverages;

b. Commercial general liability insurance (which shall be the primary policy) in the minimum amounts of \$1,000,000.00 per person, \$1,000,000.00 per occurrence, and \$2,000,000.00 in the aggregate, for bodily injury to or death of persons, and \$500,000.00 for damage to or

destruction of property, with contractual liability coverage, and which shall be an occurrence (and not a claims made) policy; and

c. Workmen's compensation insurance in the maximum statutory amounts.

5. Said insurance required to be provided by Authority (a) shall be in such forms, and with such coverages and endorsements, as both City and Association may from time to time require, (b) shall list both City and Association as additional insureds thereunder, (c) shall provide that coverages thereunder shall not be canceled, permitted to expire, revoked and/or terminated without at least thirty (30) days prior written notice to both City and Association and (d) shall contain an absolute and complete waiver of the insurance company's rights of subrogation against both City and Association. Authority shall deliver said policies of insurance to both City and Association no later than five (5) days prior to inception of coverage under the same.

6. In the event Authority shall fail to secure, maintain and/or deliver such insurance policies and coverages to both City and Association at any time during said term of years, each of City and Association shall be permitted (but in no event obligated) to obtain such insurance policies and coverages in Authority's name or as Authority's agent, and shall be compensated and reimbursed by Authority for the full cost of the insurance premiums and other expenses incurred in obtaining the same. In such event, said insurance premiums and other expenses, together with interest thereon at the rate of twelve percent (12%) per annum (calculated from the date City and/or Association pays the same until the date Authority reimburses both City and Association for the same) shall be paid to City and/or Association by Authority no later than ten (10) days after City's and/or Association's written demand for payment of the same.

7. After the term, Association shall obtain insurance on the same terms and conditions as outlined in Sections 4 through 6 herein.

8. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

[signatures on following pages]

IN WITNESS WHEREOF, the parties have caused these presents to be executed by its duly authorized officers on this the 14th day of June, 2012.

Attest: \_\_\_\_\_  
Charles E. Hagood  
as Clerk-Treasurer of  
City of Huntsville,  
a municipal corporation  
within the State of Alabama

[SEAL]

CITY OF HUNTSVILLE,  
a municipal corporation  
within the  
State of Alabama

By: \_\_\_\_\_  
Tommy Battle,  
As its Mayor

STATE OF ALABAMA    )  
                                  )  
COUNTY OF MADISON )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of the City of Huntsville, a municipal corporation within the State of Alabama, are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Huntsville, a municipal corporation within the State of Alabama, on the day the same bears date.

GIVEN under my hand and official seal on this the \_\_\_\_ day of June, A.D., 2012.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
State of Alabama  
County of Madison [SEAL]

**AUTHORITY:**

**HUNTSVILLE HOUSING AUTHORITY**

By: \_\_\_\_\_  
Name: Michael O. Lundy  
Its: Executive Director/CEO

**STATE OF ALABAMA**

**COUNTY OF MADISON**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Michael O. Lundy, Executive Director/CEO, who, being by me duly sworn, did say that he is the Executive Director of Huntsville Housing Authority , and that he has the authority to execute under oath and has so executed the above instrument for and on behalf of said Huntsville Housing Authority .

My commission expires \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

**ASSOCIATION:**

**WILLIAM HOOPER COUNCILL  
ALUMNI ASSOCIATION, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its \_\_\_\_\_

**STATE OF ALABAMA**

**COUNTY OF MADISON**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of William Hooper Council Alumni Association, Inc., and that he has the authority to execute under oath and has so executed the above instrument for and on behalf of William Hooper Council Alumni Association, Inc.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**Exhibit A**  
**Legal Description**

All that part of Section 1, Township 4 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point on the North right-of-way of St. Clair Avenue that is located South 88 degrees 33 minutes West 14.88 feet from the Southwest corner of Tract 21B of Urban Renewal Project Ala. R-32, Big Spring Area, Section "B" as recorded in Plat Book 8 at page 23 in the Office of the Judge of Probate, Madison County, Alabama; thence from the true point of beginning along the North right-of-way of St. Clair Avenue North 88 degrees 33 minutes East 214.61 feet; thence North 25 degrees 58 minutes East 416.63 feet; thence North 83 degrees 53 minutes West 410.2 feet; thence South 26 degrees 31 minutes West 39.3 feet; thence South 15 degrees 52 minutes East 291.12 feet; thence South 25 degrees 15 minutes West 120.23 feet to the true point of beginning and containing 2.72 acres, or 118,334 square feet.